IN THE NATIONAL COMPANY LAW TRIBUNAL

DIVISION BENCH, COURT NO. I

KOLKATA

TP NO. 5/KB/2021

An Application under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency nd Bankruptcy (Application to Adjudicating Authorities) Rules, 2016.

IN THE MATTER OF:

ICICI Bank Limited

…Financial Creditor

Versus

Institute of Molecular Medicine

…Corporate Debtor

Pronounced on: 08.06.2026

CORUM:

Smt. Bidisha Banerjee, Member (Judicial)
Cmde Siddharth Mishra, Member (Technical)

APPEARANCE:

Ms. Urmila Chakraborty, Adv.	] For the Financial Creditor
Mr. Avishek Guha, Adv.	]
Ms. Ankita Agrahari, Adv.	]
Ms. Sweta Majumdar, Adv.	]
Ms. Anusha Nayek, Adv.	]
Mr. Soumabho Ghose, Adv.	] For the Corporate Debtor
Ms. Ashika Daga, Adv.	]
Ms. Sampurna Mukherjee, Adv.	]
Mr. Aditya Mukherjee, Adv.	]
Ms. Urvi Chawla, Adv.	]

O R D E R

Per: Smt. Bidisha Banerjee

1. The Court convened through hybrid mode today.

2. Heard the Learned Counsels appearing for both the parties and perused the documents on record

3. **BRIEF FACTS**

3.1 On 08.12.1989, a Development Credit Agreement was entered into between India, acting by its President, and the International Development Association (IDA) whereby the IDA agreed to lend and advance to the Government of India a amount in various currencies equivalent to Special Drawing Rights (SDR) 44.2 million ('the Credit') for being the Part B of the Project described in Schedule 2 to the Development Credit Agreement ('Part B Project'), on the terms and conditions set forth therein.

3.2 It was further agreed in clause 3.02 of the said Development Credit Agreement dated 08.12.1989 that proceeds of the of the said Credit provided under the Development Credit Agreement have to be made available to ICICI Bank Limited ('ICICI Bank'/ 'Petitioner Bank') by the Government of India to carry out, on behalf of the Government of India, the program of assistance to Technology Service Institutions (primarily research and standards) to serve industrial needs by making subloans and a program of research and development sponsored by industrial firms and carried out jointly with or completely by Technology Service Institutions through the provisions of conditional sub-loans, being the projects described in Part B of Schedule 2 of the said Development Credit Agreement ('Part B Project').

3.3 In consideration of the above premises, the Government of India agreed to establish a Technology Services Revolving Fund ("TSRF") for an amount equivalent to 44.2 million for the purpose of carrying out Part B of Project. By a Subsidiary Loan Agreement dated 19.04.1990, the Petitioner Bank agreed to manage the TSRF on behalf of the Government of India in accordance with the operating guidelines satisfactory to the Association as well as on the terms and conditions *inter alia* contained the Article II therein.

3.4 The Government of India and Petitioner ICICI Bank entered into a another agreement being Supplementary Subsidiary Loan Agreement on 25.11.1994 ('Subsidiary Agreement') wherein it was agreed that the Government of India would transfer the entire amount of USD 55 million (constituting the TSRF), to the ICICI Bank whereunder, USD 40 million would be utilised for financing Technology Service Institutions ("TSI") and USD 15 million for financing industrial firms for Sponsored Research and Development Program ('SPREAD').

3.5 In terms of sub-clauses b and c of clause 2 of the said Subsidiary Agreement, ICICI Bank agreed to repay the Government of India only such repayments and to such extent as received by the Bank from amounts lent by it to the sub-borrowers under the above-noted premise, and that neither any interest will be paid by the ICICI Bank to the Government of India nor will any interest be charged by the ICICI Bank from the sub-borrowers on the TSI Loan. However, the ICICI Bank may charge the management fee at such rate and on such term as it may deem fit and recover the same from the Sub-Borrowers and no amount of such management fee would be paid by the Government of India.

3.6 In June 2004, the Respondent Institute of Molecular Medicine ('IMM'), a company established under section 25 of the Companies Act, 1956, presently under section 8 of the Companies Act, 2013, approached the Petitioner Bank for a loan of Rs. 60 million out of the Technology Institution Programme of the aforesaid TSRF (First Loan) to set up a Center for Genomic Application ('TCGA'), being a division of IMM, at New Delhi, for undertaking integrated research outsourcing activities offering a broad range of research and development services to life sciences companies primarily in the field of genomic and proteomics ('the Project'), and the same was sanctioned on 01.12.2004, A Board Resolution dated 10.12.2004 was passed by the Respondent Company to the effect of availing the said First Loan, and a Loan Agreement was executed by the Petitioner Bank and Respondent on 20.01.2005 ('First Loan Agreement') whereunder the Respondent was liable to pay the Petitioner Bank an annual service charge of 1% per annum on the outstanding amount of the Loan on a half yearly basis.

3.7 In terms of clause 8 of the First Loan Agreement, on the event of default due to *inter alia* IMM abandoning the Project, and/or the Project being proved unsuccessful to the satisfaction of ICICI Bank, the Petitioner Bank shall have the right to recall the entire amount of the Loan then outstanding together with arrears of annual service charges and IMM agreed and undertook to hand over to ICICI Bank any of the equipment purchased out of the proceeds of the Loan on as is where is basis.

3.8 In February 2009 the Respondent IMM approached the Petitioner Bank for an additional Loan of Rs. 100.0 Million (Second Loan) out of the Technology Institution Programme of the aforesaid TSRF for setting up an integrated drug discovery research platform with specialized capabilities for drug design and molecular biology at Bengal Intelligent Park, Building B, Salt Lake Electronics Complex, Kolkata. The Respondent Company passed a Resolution dated 12.04.2009 for availing of such Second Loan.

3.9 On the basis of such request, the Second Loan was also granted by the Petitioner Bank and a Loan Agreement was executed by the parties on 27.04.2009 ('Second Loan Agreement') whereby the Respondent was liable to pay the Petitioner Bank an annual service charge of 1% per annum on the outstanding amount of the Loan on a half yearly basis and on the event of occurrence of overdue, a further service charge of 10% per annum on the loan and on all other monies accruing which would be overdue under the Second Loan Agreement computed from the respective due dates. Out of the total sanctioned loan of Rs. 100 million, Rs. 40 million was drawn by the Respondent Company.

3.10 The Respondent Company defaulted in repayments and at its request, the Petitioner Bank rescheduled the repayments of the First Loan and the Second Loan on multiple occasions.

3.11 However, the Respondent Company further defaulted on such rescheduled repayment obligations as well, leading the Petitioner to issue a statutory notice on 06.04.2015, to which the respondent admitted the debt on 14.0.2015 but requested more time to repay, citing operational difficulties. The debt was further acknowledged by the Respondent IMM on 04.09.2015.

3.12 Pursuant to the persistent failure of repayment by the Respondent, winding-up petition under sections 433 and 434 of the Companies Act, 1956 were filed by the Petitioner Bank, initially before the Hon'ble High Court at Calcutta which was transferred to this Tribunal vide an order dated 26.02.2021 to be dealt under section 7 of the Code. Hence, the present Petition.

4. **SUBMISSIONS OF THE PETITIONER**

4.1 In the aforesaid backdrop, the Petitioner claims that the total amount in default as indebted to the Petitioner as of 1.10.2021 is Rs. 8,15,80,765/- (including).

4.2 The Petitioner Bank submits that the Respondent Company is commercially insolvent and should be wound up by the Court.

4.3 It is alleged that the Respondent has no intention of paying the dues and has adopted a mala-fide and evasive stand.

4.4 The petitioner further alleges that the respondent is virtually a defunct company with no commercial substratum and no possibility of revival and the existence of the company is not beneficial to public interest.

4.5 The Petitioner contends that if the wrongful acts of the Respondent is allowed to continue, the same will adversely affect the right of the Petitioner to recover its lawful dues that is owned by Government of India.

5. **SUBMISSIONS OF THE RESPONDENT**

5.1 Per Contra, the Respondent Company submits that the Financial Creditor was aware of the acute financial difficulties being faced by the Corporate Debtor since 2013 as would be borne out from the documents annexed to the said petition itself which shows that the Financial Creditor agreed to revise the repayment schedule. In fact, on 20.05.2013, the Second Loan Agreement was amended and the revised sanction amount was amended to Rs. 8 million instead of Rs.10 million. Subsequently, the Financial Creditor further cancelled Rs. 60

million from the sanctioned amount of Rs.100 million to the Corporate Debtor. The **Financial Creditor therefore knew that the project was facing serious difficulties including a severe cash crunch** and the Corporate Debtor informed the Financial Creditor, inter alia, about the TCGA building construction having been stalled through its letter dated January 28, 2013.

5.2 The Respondent Company further submits that the Financial Creditor has acted simply as a nodal agency to disburse the funds. The funds which were disbursed to the Corporate Debtor were from the fund secured by the Government of India in collaboration with foreign nations for developing scientific research in India. Hence the **Financial Creditor not being the entity which owns the funds but merely being a nodal agency for disbursement of the funds cannot step into the shoes of the Government of India for the purpose of trying to recover the alleged "loan" in the present proceedings**.

5.3 It is contended that the Financial Creditor advanced sums of money as mentioned in the agreements executed between the Financial Creditor and the Corporate Debtor **as investment**, although the same was termed as a "loan". However, the primary objective of the fund disbursed was for the purpose scientific research. The funds were pooled in by the Government of India. The purpose of such investment was development and support which was to be extended to the Corporate Debtor in carrying out the scientific research.

5.4 The Respondent Company submits that it is not engaged in any form of business activities. As has been stated hereinabove, it was known well to the Financial Creditor that the sums being advanced were to be utilised for research and development. The objects for establishment of the Corporate Debtor would be evident from its Memorandum of Association. **There is no document on record to show that the Government of India has sought to recover or realize the funds disbursed**. Hence the instant proceedings are misconceived.

5.5 The Corporate Debtor contends that the Financial Creditor having made an alleged claim of Rs. 5,76,53,686 before the Hon'ble High Court at Calcutta is barred to make the present alleged claim of Rs.

8,15,80,765 under the present transfer proceedings, and the said petition ought to be dismissed on this ground alone.

ANALYSIS AND FINDINGS

6. **DISCERNIBLE FACTS**:

6.1 The International Development Association agreed to lend an amount equivalent to SDR 44.2 million ('the Credit') to the Government of India for the purpose of **carrying out Part-B of the Project** which reads as follows:

"*Part B:*

1. *The carrying out of a program of assistance to technology service institutions (primarily research and standards) to serve industrial needs by making sub-loans.*

2. *The carrying out of a program of research and development sponsored by industrial firms and carried out jointly with or completely by technology service institutions through the provision of conditional sub-loans.*"

6.2 Pursuant thereto, the Government of India agreed to establish a Technology Services Revolving Fund ('TSRF') with the Credit amount and appointed the Petitioner ICICI Bank to manage the same.

6.3 Section 3.01(b) of the Agreement between the International Development Association and Government of India stipulates as follows:

"*Without any limitation or restriction upon any of its other obligations under the Development Credit Agreement, the Borrower shall cause ICICI and IDBI to perform in accordance with the provisions of the Project Agreements all of their respective obligations therein set forth, shall take or cause to be taken all action necessary or appropriate to enable them to perform such obligations, and shall not take or permit to be taken any action which would prevent or interfere with such performance.*"

Hence, the Petitioner ICICI Bank, being only the nodal agency, has no control in disbursal of the funds.

6.4 Pursuant thereto, the Government of India and the Petitioner ICICI Bank further agreed that the Government of India would transfer the entire USD 55 million, constituting the TSRF, as loan to the Petitioner Bank, out of which 40 million would be utilised by granting sub-loans to **Technology Service Institutions** ('TSI') and the remaining USD 15 million for granting sub-loans to **industrial firms** for Sponsored Research and Development Programme ('SPREAD').

6.5 The ICICI Bank was obligated to repay the Government of India only such sums as it received from the sub-borrowers of either the TSI Loan or the SPREAD Loan, as repayments. The Bank was under no obligation to repay amounts that it did not receive from the sub-borrowers.

6.6 Apart from the management fee payable to the ICICI Bank, **no interest was to be charged against the TSI Loans** by either the Government of India or by ICICI Bank. On the other hand, specific interest rates have been stipulated to be charged by the ICICI Bank for the SPREAD loan.

6.7 Both the Loans, defaults arising out of which form the subject matter of the present petition, were advanced by the Petitioner ICICI Bank under Technology Institution Programme. Upon perusal of the records placed before this Tribunal, it is evident that the Technology Institution Programme is one and the same as the TSI Loan Programme, the two being different nomenclatures for the same scheme.

6.8 It is now relevant to note the following provisions of the Insolvency and Bankruptcy Code, 2016:

"*Section-5 Definitions: In this Part* (Part- II)*, unless the context otherwise requires,— …*

(7) "financial creditor" means <u>any person to whom a financial debt is owed</u> and includes a person to whom such debt has been legally assigned or transferred to.

(8) "financial debt" means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes—

…"

(Emphasis Added)

6.9 Further, it is relevant to note the following decisions of Hon'ble Apex Court which define "Financial Debt":

(a) **Pioneer Urban Land and Infrastructure Ltd. v. Union of India** reported in (2019) 8 SCC 416:
"*any debt to be treated as financial debt, there must happen disbursal of money to the borrower for utilization by the borrower and that the disbursal must be against consideration for time value of money.*"

(Emphasis added)

(b) **Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd. v. Axis Bank Limited** reported in (2020) 8 SCC 401:
"*the essential condition of financial debt is disbursement against the consideration for time value of money*."

(Emphasis added)

7. **INFERENCE**:

7.1 The Government of India, in its agreements with the Petitioner Bank, did not stipulate any timely repayment obligation either upon the Petitioner Bank or upon the sub-borrowers. The repayment obligation of the Petitioner Bank to the Government of India was expressly made conditional upon and co-extensive with recoveries actually made from the sub-borrowers. No repayment was due if no recovery was effected. This structure is fundamentally inconsistent with a transaction premised on the time value of money.

7.2 The Petitioner Bank, being admittedly only the manager of the TSI fund, had no discretion but was under obligation to disburse the loan, and nor was it entitled to retain the repayments received. It deployed no capital of its own and bore no independent economic risk in the transaction. A party so positioned as one that neither foregoes its own resources nor assumes any financial risk of its own, has nothing of its own to price, and therefore nothing against which a consideration for the time value of money can be said to flow. The Petitioner Bank was therefore, by the very nature of its position, as assigned to it in terms of the agreements, inherently incapable of granting a loan against the consideration for the time value of money, and cannot consequently constitute itself a financial creditor within the meaning of Section 5(7) of the Code.

7.3 The explicit contractual mandate prohibiting the charge of any interest on TSI Loans, as distinguished from the SPREAD Loans under the same programme which carried defined interest rates, further and conclusively confirms the absence of any consideration for the time value of money.

8. **CONCLUSION**

8.1 In view of the foregoing, this Tribunal finds that the amounts advanced to the Corporate Debtor under the Loan Agreements were not disbursed against any consideration for the time value of money. The said amounts therefore do not constitute a "financial debt" within the meaning of Section 5(8) of the Insolvency and Bankruptcy Code, 2016. Consequently, the Petitioner cannot be said to be a "financial creditor" of the Corporate Debtor within the meaning of Section 5(7) of the Code, and is not entitled to maintain the present proceedings under Section 7 thereof.

8.2 The present application being **TP No. 5/KB/2021** is accordingly **dismissed**.

Cmde. Siddharth Mishra	**Bidisha Banerjee**
Member (Technical)	**Member (Judicial)**

This Order is signed on 08.06.2026

Bhatt, O. [LRA]